IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

MFA.No. 1109 of 2000

OPMV.689/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM
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APPELLANT/PETITIONERS 2 AND 3 :
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1. **LAKSHMI, WIDOW OF P. NARAYANAN,**

2. **P. JAYACHANDRAN, S/O. P. NARAYANAN**
BOTH ARE RESIDING AT PURAMBOKKIL HOUSE,
BHEEMANAD AMSOM, MANARKKKAD TALUK,
PALAKKAD DIST.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

RESPONDENTS/RESPONDENTS:
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1. **KUTTIKRISHNA WARRIER,**
S/O. LAKSHMI WARRASSIAR,
RESIDING AT PUTIYATTU WARRIAM,
PERUMBADARI DESOM, ARAKURRISSI AMASOM,
MANNARKKAD TALUK, PALAKKAD DIST.

2. **MOHAMMEDALI, RESIDING AT PARIYADATH HOUSE,**
NAYADI KUNNU P.O., PERUMBADARI, MANNARKKAD,
PALAKKAD DIST.

3. **THE NEW INDIA INSURANCE CO. LTD.,**
CATHOLIC CENTRE, IIND FLOOR, UPHILL, MALAPPURAM.

4. UNITED INDIA INSURANCE CO. LTD., G.B. ROAD, PALAKKAD.

BY ADV. SRI.P.G.PARAMESWARA PANICKER - R1 & R2
SRI.SANTHEEP ANKARATH
SRI.A.A.MOHAMMED NAZIR -- R4
SRI.E.R.VENKATESWARAN -- R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.1109 OF 2000

Dated 28th May, 2007

JUDGMENT

Koshy,J.

Son of the first appellant while driving an autorickshaw met with an accident as the autorickshaw went out of his control and it capsized. Parents, brothers and sister filed an application for compensation contending that the accident occurred as another autorickshaw owned and driven by the first and second respondents hit the autorickshaw driven by the deceased. But, on going through the evidence, the Tribunal found that a false case was set up. PWs 3 and 4 were passengers in the autorickshaw at the time of the accident and they also sustained injuries. They deposed in terms of the claim petition. But, when they were admitted in the hospital, they stated that the autorickshaw went out of control and it capsized and involvement of another autorickshaw was not mentioned by them. The insurance company examined the police inspector and produced Exts.B1 to B7 to show that the accident occurred due to the capsizing of the autorickshaw and as the autorickshaw went out of control and no third party is involved. Therefore, the claim petition filed by the appellants was dismissed. Then the question is whether claimants are entitled to get compensation under section 140

of the Motor Vehicles Act. It is true that negligence is not a question to be considered for claiming compensation under section 140 of the M.V.Act. But, unfortunately the deceased driver was the owner of the vehicle also. Primary liability is of the owner to pay compensation. Therefore, the insurance company cannot be mulcted with the compensation as the deceased happened to be the owner of the vehicle also. In the above circumstances, the Tribunal dismissed the application and we see no ground to interfere with the same.

The appeal is dismissed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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